



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FWP-174884

PRELIMINARY RECITALS

Pursuant to a petition filed June 8, 2016, under Wis. Admin. Code, §HA 3.05(1), to review a decision by Milwaukee Enrollment Services to discontinue FoodShare (FS), a hearing was held on July 12, 2016, at Milwaukee, Wisconsin, with the judge appearing by telephone.

The issue for determination is whether the Division of Hearings and Appeals can reach the merits of petitioner's appeal when it was filed more than 90 days after the negative action.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Lisa Mack
Milwaukee Enrollment Services
1220 W. Vliet Street
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner received FS as a one-person household through the end of January, 2016. By a notice dated January 19, 2016, the agency informed petitioner that FS would end February 1, 2016 because his three-month time limited benefits expired without complying with work program

requirements. The notice informed petitioner that he could appeal within 90 days, with May 2, 2016 specifically listed as the final date to appeal.

3. Petitioner filed this appeal on June 8, 2016.

DISCUSSION

Pursuant to a provision of Wisconsin's 2007-2009 biennial budget, Wisconsin has operated a voluntary FoodShare Employment and Training (FSET) program since 2008. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) limits the receipt of FS benefits to three full months in a 36-month time period for Able-Bodied Adults without Dependents (ABAWDs) who do not meet the work requirement or meet an exemption from the work requirement. As part of Wisconsin's 2014-15 biennial budget, 2013 Wisconsin Act 20 created Wis. Stat., §49.79(10), which mandated FS eligibility and work requirements for ABAWDs to be implemented in Wisconsin beginning in 2014, consistent with federal regulations 7 CFR §273.7 and 7 CFR §273.24. The program began in Milwaukee County effective April 1, 2015, and FS recipients were required to meet the requirements beginning with the next FS review completed after April 1, 2015. FS Handbook, §3.17.1.2.

Under Wis. Stat., §49.79(10), an ABAWD is required to fulfill a work requirement. If he does not fulfill the work requirement, he is limited to receiving no more than three months' FS during a three year period. The program's requirements are specified in the Department's FS Handbook at §3.17.1. A person can be exempt from the program if he is unfit for employment, that is, he is unable to work as evidenced by a statement by a health care professional or social worker. Handbook, §3.17.1.5.

To meet the work requirement the ABAWD must work a minimum of 80 hours per month, participate in a work program 80 hours per month, or a combination of both for 80 hours per month. Handbook, §3.17.1.7. The person is limited to three months of FS eligibility in which he is not meeting the 80-hour requirement and is not exempt. Handbook, §3.17.1.9. FS ends after three months of failing to meet the work requirement, but eligibility can begin again if the person becomes exempt or meets the work requirement for a 30-day period (the person could reapply for FS *after* meeting the requirement for 30 days). Handbook, §3.17.1.11.

When timely and adequate notice is given to the household, the household must appeal within 90 days of the negative action. 7 C.F.R. §273.15(g); see also Wis. Admin. Code, §HA 3.05(3)(b). If an appeal is not filed timely the Division of Hearings and Appeals does not have jurisdiction to review the merits of the appeal.

Petitioner filed this appeal on June 8, 2016, 129 days after the February 1, 2016 FS termination. Petitioner testified that he had medical reasons for failing to comply with the work program, but I cannot review those reasons because petitioner did not file his appeal timely. I asked petitioner why he waited so long to appeal; he replied that he did not know he could do so until just before he filed. However, the notice informing him of the discontinuance clearly indicated the right to appeal and how to do so.

CONCLUSIONS OF LAW

Petitioner's appeal of the end of FS after three time limited months was filed untimely.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

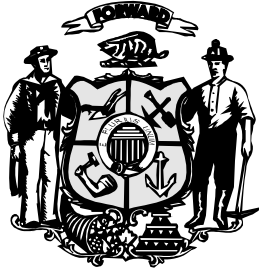
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 14th day of July, 2016

\s _____
Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



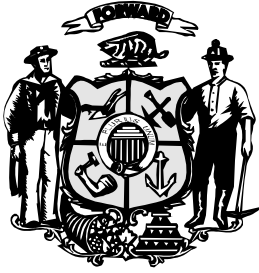
State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 14, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 27, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability